BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GABRIEL DURAN)
Claimant)
VS.)
) Docket No. 253,770
GOODYEAR TIRE AND RUBBER COMPANY)
Respondent)
AND)
)
LIBERTY/HELMSMAN MGMT. SERVICES)
Insurance Carrier)

ORDER

Respondent and its insurance carrier appealed the March 7, 2003 Award entered by Administrative Law Judge Brad E. Avery. The Board placed this appeal on its summary calendar for determination without oral argument. Gary M. Peterson of Topeka, Kansas, was appointed Board Member Pro Tem for participating in this proceeding.

APPEARANCES

George H. Pearson of Topeka, Kansas, appeared for claimant. John A. Bausch of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a February 10, 2000 accident and resulting injuries to the back and shoulder. In the March 7, 2003 Award, Judge Avery determined claimant sustained an 84.5 percent permanent partial general disability.

Respondent and its insurance carrier challenge the manner in which the Judge computed claimant's award. They argue the Judge erred by ordering payment of permanent partial general disability benefits for the same weeks that they were ordered to

pay temporary total disability benefits. Accordingly, they request the Board to correct that language in the Award.

In his brief to the Board, claimant does not object to the respondent and its insurance carrier's request. Moreover, claimant requests the Board to modify the Award as requested.

As the parties agree that permanent partial general disability benefits are not due for those weeks that claimant was temporarily and totally disabled, there is no legal or factual issue for the Board to decide. Accordingly, the Board will modify the Award language as agreed.

For future reference, the parties are reminded that they may submit agreed orders when they are able to resolve their differences.

AWARD

WHEREFORE, the Board modifies the March 7, 2003 Award, as follows:

Gabriel Duran is granted compensation from Goodyear Tire and Rubber Company and its insurance carrier for a February 10, 2000 accident and resulting disability. Based upon an average weekly wage of \$981.64, Mr. Duran is entitled to receive 64 weeks of temporary total disability benefits at \$383 per week, or \$24,512, followed by 197.10 weeks of permanent partial general disability benefits at \$383 per week, or \$75,488, for an 84.5 percent permanent partial general disability and a total award not to exceed \$100,000.

As of June 18, 2003, Mr. Duran is entitled to receive 64 weeks of temporary total disability compensation at \$383 per week in the sum of \$24,512, plus 110.86 weeks of permanent partial general disability compensation at \$383 per week in the sum of \$42,459.38, for a total due and owing of \$66,971.38, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$33,028.62 shall be paid at \$383 per week until paid or until further order of the Director.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this	day of June 2003.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: George H. Pearson, Attorney for Claimant
John A. Bausch, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director